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HOUSE BILL 55

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

John A. Heaton

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCE; REMOVING INVESTMENT LIMITATIONS AND
ESTABLISHING STANDARDS FOR PRUDENT INVESTMENT OF THE
EDUCATIONAL RETIREMENT FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-11-13 NMSA 1978 (being Laws
1967, Chapter 16, Section 137, as amended) is amended to read:

"22-11-13. ~~[INVESTMENT OF]~~ BOARD AUTHORITY TO INVEST THE
FUND-- PRUDENT INVESTOR STANDARD-- INDEMNIFICATION OF BOARD. --

~~[A. The board is authorized to invest or reinvest
the fund and may invest the fund only in the following:~~

~~(1) obligations, including but not limited to
bills, bonds or notes of the United States, United States
government sponsored enterprises or federal agency securities;~~

~~(2) obligations, including but not limited to~~

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1 ~~bills, bonds and notes of governments other than the United~~
2 ~~States or their political subdivisions, agencies or~~
3 ~~instrumentalities, and these may be denominated in foreign~~
4 ~~currencies;~~

5 ~~(3) obligations, including but not limited to~~
6 ~~bonds or notes of a municipality or political subdivision of~~
7 ~~the state that were issued pursuant to law; provided the issuer~~
8 ~~has not, within ten years prior to making the investment, been~~
9 ~~in default for more than three months in the payment of any~~
10 ~~part of the principal or interest on any debt evidenced by its~~
11 ~~bonds, notes or obligations; and provided the bonds are city or~~
12 ~~county utility, or utility-district revenue bonds with the~~
13 ~~revenue of such utility, other than for payment of operation~~
14 ~~and maintenance expenses, pledged wholly to payment of the~~
15 ~~interest on and the principal of such indebtedness, and the~~
16 ~~utility project has been completely self-supporting for a~~
17 ~~period of five years preceding the date of the investment;~~

18 ~~(4) contracts for the present purchase and~~
19 ~~resale at a specified time in the future, not to exceed one~~
20 ~~year, of specific securities at specified prices at a price~~
21 ~~differential representing the interest income to be earned by~~
22 ~~the board. No such contract shall be entered into unless the~~
23 ~~contract is fully secured by obligations of the United States,~~
24 ~~or other securities backed by the United States, having a~~
25 ~~market value of at least one hundred two percent of the amount~~

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1 ~~of the contract. The collateral required in this section shall~~
2 ~~be delivered to the state fiscal agent or his designee~~
3 ~~contemporaneously with the transfer of funds or delivery of the~~
4 ~~securities, at the earliest time industry practice permits, but~~
5 ~~in all cases settlement shall be on a same-day basis. No such~~
6 ~~contract shall be entered into unless the contracting bank,~~
7 ~~brokerage firm or recognized institutional investor has a net~~
8 ~~worth in excess of five hundred million dollars (\$500,000,000);~~
9 ~~(5) obligations, including but not limited to~~
10 ~~bonds, notes, debentures, instruments, conditional sales~~
11 ~~agreements, securities or other evidence of indebtedness of any~~
12 ~~corporation, partnership or trust organized within the United~~
13 ~~States; preferred stock or common stock or any security~~
14 ~~convertible to common stock of any corporation, partnership or~~
15 ~~trust organized within the United States whose securities are~~
16 ~~listed on at least one national stock exchange or on the~~
17 ~~N.A.S.D. national market or American depositary receipts of any~~
18 ~~corporation organized outside the United States whose~~
19 ~~securities are listed on at least one national stock exchange~~
20 ~~or on the N.A.S.D. national market; provided that the fund~~
21 ~~shall not at any one time own more than ten percent of the~~
22 ~~voting stock of a company;~~

23 ~~(6) prime bankers' acceptances issued by money~~
24 ~~center banks;~~

25 ~~(7) obligations, including but not limited to~~

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1 ~~bonds, notes, debentures, instruments, conditional sales~~
2 ~~agreements, securities or other evidence of indebtedness of any~~
3 ~~corporation, partnership or trust organized outside of the~~
4 ~~United States, and these may be denominated in foreign~~
5 ~~currencies; preferred stock or common stock or any security~~
6 ~~convertible to common stock of any corporation, partnership or~~
7 ~~trust organized outside of the United States whose securities~~
8 ~~are listed on at least one national or foreign stock exchange,~~
9 ~~and these may be denominated in foreign currencies; provided~~
10 ~~that the fund shall not at any one time own more than ten~~
11 ~~percent of the voting stock of a company;~~

12 ~~(8) currency transactions, including spot or~~
13 ~~cash basis currency transactions, forward currency contracts~~
14 ~~and buying or selling options or futures on foreign currencies,~~
15 ~~but only for the purposes of hedging foreign currency risk and~~
16 ~~not for speculation;~~

17 ~~(9) stocks or shares of a diversified~~
18 ~~investment company registered under the Investment Company Act~~
19 ~~of 1940, as amended, which invests primarily in United States~~
20 ~~or non-United States fixed income securities, equity securities~~
21 ~~or short-term debt instruments pursuant to Paragraphs (1), (2),~~
22 ~~(4), (5) and (7) of this subsection, provided that the~~
23 ~~investment company has total assets under management of at~~
24 ~~least one hundred million dollars (\$100,000,000); individual,~~
25 ~~common or collective trust funds of banks or trust companies,~~

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1 ~~which invest primarily in United States or non-United States~~
2 ~~fixed income securities, equity securities or short term debt~~
3 ~~instruments pursuant to Paragraphs (1), (2), (4), (5) and (7)~~
4 ~~of this subsection, provided that the investment manager has~~
5 ~~assets under management of at least one hundred million dollars~~
6 ~~(\$100,000,000); the board may allow reasonable administrative~~
7 ~~and investment expenses to be paid directly from the income or~~
8 ~~assets of these investments; or~~

9 ~~(10) industrial revenue bonds issued pursuant~~
10 ~~to the Industrial Revenue Bond Act, where both the principal~~
11 ~~and interest of the bonds are fully and unconditionally~~
12 ~~guaranteed by a lease agreement executed by a corporation~~
13 ~~organized and operating within the United States and has issued~~
14 ~~securities traded on one or more national stock exchanges and~~
15 ~~where the senior securities of the guaranteeing corporation~~
16 ~~would have the equivalent of a BAA rating.]~~

17 A. The board is authorized to invest or reinvest
18 the fund. The board shall invest and manage the fund as a
19 prudent investor would, by considering the purposes, terms,
20 distribution requirements and other circumstances of the trust.
21 In satisfying this standard, the board shall exercise
22 reasonable care, skill and caution.

23 B. An investment or management decision of the
24 board concerning the fund shall not be evaluated in isolation,
25 but in the context of the fund portfolio as a whole and as part

1 of an overall investment strategy having risk and return
2 objectives reasonably suited to the fund.

3 ~~[B.]~~ C. The board or its designated agent may enter
4 into contracts for the temporary exchange of securities for the
5 use by broker-dealers, banks or other recognized institutional
6 investors, for periods not to exceed one year, for a specified
7 fee or consideration. ~~[No]~~ Such a contract shall not be
8 entered into unless the contract is fully secured by a
9 collateralized, irrevocable letter of credit running to the
10 board, cash or equivalent collateral of at least one hundred
11 two percent of the market value of the securities plus accrued
12 interest temporarily exchanged. This collateral shall be
13 delivered to the state fiscal agent or its designee
14 contemporaneously with the transfer of funds or delivery of the
15 securities. Such contract may authorize the board to invest
16 cash collateral in instruments or securities that are
17 authorized fund investments and may authorize payment of a fee
18 from the fund or from income generated by the investment of
19 cash collateral to the borrower of securities providing cash as
20 collateral. The board may apportion income derived from the
21 investment of cash collateral to pay its agent in securities
22 lending transactions.

23 ~~[C.]~~ D. Commissions paid for the purchase or sale
24 of any securities pursuant to the provisions of the Educational
25 Retirement Act shall not exceed brokerage rates prescribed and

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1 approved by national stock exchanges or by industry practice.

2 ~~[D. Investment of the fund shall be made with the~~
3 ~~exercise of that degree of judgment and care, under the~~
4 ~~circumstances then prevailing, which men of prudence,~~
5 ~~discretion and intelligence exercise in the management of their~~
6 ~~own affairs, not for speculation but for investment,~~
7 ~~considering the probable safety of their capital as well as the~~
8 ~~probable income to be derived.]~~

9 E. Securities purchased for the fund shall be held
10 in the custody of the state treasurer. At the direction of the
11 board, the state treasurer shall deposit with a bank or trust
12 company the securities for safekeeping or servicing.

13 F. The board may consult with the state investment
14 council or the state investment officer; may request from the
15 state investment council or the state investment officer any
16 information, advice or recommendations with respect to
17 investment of the fund; may utilize the services of the state
18 investment council or the state investment officer; and may act
19 upon any advice or recommendations of the state investment
20 council or the state investment officer. The state investment
21 council or the state investment officer shall render investment
22 advisory services to the board upon request and without expense
23 to the board. The board may employ investment advisory
24 services and pay reasonable compensation from the fund for the
25 services. The board may also employ investment management

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1 services and pay reasonable compensation from the fund for the
2 services to make investment decisions on behalf of the board,
3 within the investment objectives, policies and operating
4 guidelines as directed by the board to the investment manager.

5 G. Members of the board, jointly and individually,
6 shall be indemnified from the fund by the state from all
7 claims, demands, suits, actions, damages, judgments, costs,
8 charges and expenses, including court costs and ~~[attorneys']~~
9 attorney fees, and against all liability, losses and damages of
10 any nature whatsoever that members shall or may at any time
11 sustain by reason of any decision made in the performance of
12 their duties pursuant to this section. "

13 Section 2. EFFECTIVE DATE. --The effective date of the
14 provisions of this act is July 1, 2005.